

Attorney Docket No.: DC-0190  
Inventors: Hamilton and Stanton  
Serial No.: 10/089,475  
Filing Date: August 12, 2002  
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**REMARKS**

Claim 9 is pending in the instant application. Claim 9 has been rejected. No new matter has been added by this amendment. Reconsideration is respectfully requested in light of the following remarks.

**I. Rejection of Claims Under 35 U.S.C. §103**

Claim 9 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Moyer et al. ((Aug. 1999) *Am. J. Physiol.* 277(2 Pt 2):F271-6) in view of Cormack et al. ((1996) *Gene* 173:33-38). The Examiner suggests that Moyer et al. teach a method of measuring the effect of butyrate on expression of a CFTR-GFP nucleic acid. The Examiner further suggests that while Moyer et al. do not teach eGFP, that Cormack et al. teach mutants of GFP which fluoresce more intensely than wild-type GFP. Therefore, it is suggested that it would have been obvious to one of skill in the art at the time the invention was made to practice a method for identifying agents which increase functional cell surface expression of the deltaF508 CFTR protein by exposing cells comprising a genetic construct comprising human CFTR coding sequence and a reporter gene to the agent, measuring expression levels or trafficking of CFTR to the membrane, and comparing the levels of CFTR expression or trafficking to controls as taught in Moyer reference, wherein the reporter gene is eGFP as taught in the Cormack reference. Applicants respectfully traverse this rejection.

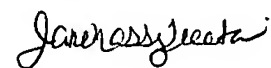
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In Applicants' response filed April 28, 2004, Applicants indicated that Moyer et al. is Applicants' own publication published within the one year grace period allowed under 35 U.S.C. §102(b). The Examiner suggests that the submission of a 1.132 declaration can therefore overcome this rejection. Accordingly, Applicants submit herewith a 1.132 declaration indicating that while Bryan D. Moyer, Dominique Loffing-Cueni, Jan Loffing, and Donna Reynolds generated and analyzed data presented in Moyer et al., they did not directly contribute to the conceptualization of the present invention. Because Moyer et al. is not by another nor was it published more than twelve months prior to the present application, it is an improper prior art reference. Thus, it is respectfully requested that this rejection be withdrawn.

## **II. Conclusion**

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,



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